

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14217 of David Kip and Susan R. Willett, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against an accessory private garage shed being located in the front yard of a single family dwelling (Sub-section 7601.2) in an R-1-B District at premises 4343 39th Street, N.W., (Square 1834, Lot 32).

HEARING DATE: December 12, 1984
DECISION DATE: January 9, 1985

FINDINGS OF FACT:

1. The subject property is located at the northeast corner of the intersection of 39th Street and Windom Place N.W. and is known as premises 4343 39th Street, N.W. It is zoned R-1-B.
2. The subject site contains approximately 17,400 square feet of lot area, with 108 feet of frontage on 39th Street and 150 feet of frontage on Windom Place.
3. The subject site is improved with a three-story brick residence and a one-story frame garage.
4. The existing residence, known as "the Rest," was constructed c. 1800 or before, and has been designated as a Category III Landmark pursuant to the National Historic Preservation Act of 1966. A Category III Landmark is defined as being "of value which contributes to the cultural heritage or visual beauty and interest of the District of Columbia and its environs, and which should be preserved or restored, if practical."
5. The existing garage at the northeast corner of the property is presently used for the storage of garden tools and equipment. The applicants propose to construct a small addition to that garage and convert it to use as servants quarters. No relief from the Board is necessary for the proposed addition and conversion of the existing garage.
6. The applicants propose to construct a new garage/shed at the southwest corner of the subject lot to replace the space lost by the conversion of the existing garage into servants quarters. The location of the proposed garage/shed is within the front yard of the existing premises. A

variance from Sub-section 7601.2 of the Zoning Regulations, which prohibits that location, is therefore required.

7. The applicants started work on the garage/shed without obtaining proper permits and without obtaining approval of the Board. A concrete slab has been poured at the location of the proposed garage/shed. Work was stopped as soon as the applicants were notified by an inspector from the District Government that permits were required.

8. There is an existing circular drive and two curb cuts along the 39th Street frontage. The applicants propose to provide an extension to the southern portion of the existing driveway to access the proposed garage/shed.

9. The orientation of the main structure is at an angle of approximately eighteen degrees to the existing street grid pattern. The structure originally fronted on Wisconsin Avenue, which is located approximately 250 feet southwest of the subject structure, and was oriented at a right angle to Wisconsin Avenue. Windom Place and 39th Street were added to the street system subsequent to the construction of the existing structure.

10. Because of the orientation of the existing residence on the subject lot, the applicants testified that in their opinion the Windom Place frontage serves functionally as their front yard. The proposed garage/shed would be located in what the applicants consider to be their side yard.

11. Under the Zoning Regulations, the location of the proposed garage/shed would be in the front yard regardless of which street was selected as the front.

12. The existing garage is accessed via a driveway immediately north of the existing residence. There is no alley to the north or east of the site to provide alternative access to the rear of the subject lot.

13. The applicants testified that the location of the proposed garage/shed was selected because of its close proximity to the existing circular driveway and because existing trees and a rise in elevation would screen the building from the street.

14. The applicants testified that alternative locations for the proposed structure were not practical. The location of the structure at the southeast corner of the site would require a curb cut off of Windom Place and a very steep driveway to reach the garage due to the existing topography.

15. Alternatively, the applicants testified that the existing driveway could be extended across the Windom Place frontage which would mar the setting and view of the existing residence.

16. The applicants further testified that the proposed structure could not be located adjacent to the existing garage due to the small size of the rear yard and the location of an existing gazebo and several large trees.

17. The applicants argued that the subject property is affected by an extraordinary situation or condition in that the existing residence has a historic landmark designation, there is no alley access to the rear of the property, the existing street pattern, the position of the house on the lot, and the topography of the site.

18. The applicants further argued that the strict application of the Zoning Regulations would result in a practical difficulty upon them in that the location of the proposed garage/shed on any other portion of the lot would obstruct the view of the existing residence and detract from its physical beauty and historic character.

19. The record contains several letters from nearby residents in support of the application based on the tasteful design of the proposed structure and the aesthetic and historic character of the subject site which enhances the surrounding area.

20. There was no opposition to the application at the public hearing or of record.

21. Advisory Neighborhood Commission 3F made no recommendation of the application.

22. The Board finds that, although the proposed garage/shed is tastefully designed, it is nevertheless located in the front yard of the premises. The subject site is large and the Board finds that another location on the site could be selected, albeit with some inconvenience, without detracting from the historic character of the existing historic residence, which would conform with the requirements of Sub-section 7601.2 which restricts the location of accessory buildings to the rear yard. The presence of an existing gazebo and trees and their possible relocation or removal does not constitute a basis to grant the requested variance. The Board finds that there is sufficient space in the rear yard to expand the existing garage to accomplish the combined purposes of servants quarters and garage, or to construct a second structure.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicants are seeking an area variance, the granting of which requires substantial evidence of a practical difficulty upon the owner which arises out of some exceptional situation or condition inherent in the property itself and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose or integrity of the zone plan.

The Board concludes that the burden of proof has not been met. The R-1 District is designed to protect low-density residential areas developed with single family, detached dwellings. Few additional and compatible uses are permitted. Sub-section 7601.2 of the Zoning Regulations restricts the location of accessory buildings to the rear yard. As set forth in Finding of Fact No. 22, the Board concludes that the applicants can locate the proposed accessory building to conform to the provisions of the Zoning Regulations.

The Board further concludes that the applicants have not demonstrated the existence of a practical difficulty arising out of the property. The grounds cited by the applicants are mostly for their own convenience, and do not serve as the basis to grant a variance. The Board further concludes that the requested relief cannot be granted as in harmony with the intent and purpose of the Zoning Regulations and map. Accordingly, it is ORDERED that the application is hereby DENIED.

VOTE: 3-2 (Douglas J. Patton and William F. McIntosh to deny; Lindsley Williams to deny by proxy; Charles R. Norris and Carrie L. Thornhill opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

23 APR 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."